IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1363 of 2005

Reserved on 2.11.2007

Date of decision 29.12.2007

Dr.Y.S.Parmar University of Horticulture
& Forestry Petitioners

Vs.

Presiding Judge, Labour Court
and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioner: Mr.B.S.Atri, Advocate.

For the respondents: Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan, Dy.A.G., for respondent No.2.

Mr.R.K.Gautam, Senior Advocate, with Ms. Archna Dutt, Advocate, for respondents No.3 to 5.

Rajiv Sharma, J.

A challenge has been laid to the award passed by the Labour Court, Shimla on 2.9.2005 in Reference No.22 of 2000. The workmen had raised the demand notice claiming pay scale of Rs.1500-2700 with effect from 1.1.1986. The State Government made the following reference to the Labour Court Shimla after failure of the conciliation proceedings:

> "Whether the demand raised by Smt.Neelam Sharma, S/Shri Shayam Lal Kaushal and Balak Ram through their authorized representative Shri J.C.Bhardwaj, General Secretary, (HPAITUC)

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[1] Whether reporters of local papers are allowed to see the judgment? No.

with (1) Vice Chancellor, Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, and (2) Registrar Dr.Y.S.Parmar, University of Horticulture and Forestry, Nauni, Distt. Solan H.P. for the pay scale of Rs.1500-2700 w.e.f. 1.1.1986 on the principle of "Equal Pay for Equal Work", is reasonable and justified? If yes to what relief of amount of arrears the above workmen are entitled"?

The respondents No.3 to 5 hereinafter referred to as the workmen for the convenience sake filed their statements of claim to which detailed reply was filed by the petitioner hereinafter referred to as the Management for brevity sake. The workmen had filed detailed rejoinder to the reply filed by the Management. The Labour Court on the basis of the evidence led by the parties answered the reference in the affirmative holding the workmen entitled to the pay scale of Rs.1500-2700 with effect from 1.1.1986.

Mr.B.S.Atri, learned counsel appearing for the Management had strenuously argued that the Award dated 2.9.2005 is not sustainable in the eyes of law on various counts i.e. (a) the Labour Court had no jurisdiction to adjudicate upon the claim preferred by the workmen in view of Section 15 of the Administrative Tribunals Act, 1985; (b) the respondents are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and lastly (c) on the ground that the petitioner University is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Mr.R.K.Gautam, learned senior counsel assisted by Ms.Archna Dutt, learned counsel appearing for the workmen has supported the Award dated 2.9.2005.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

The workmen were appointed as Semi Professional Assistants and their designation was changed to Professional Assistant vide notification dated 7.9.1993. It is not disputed that the employees of the petitioner University are entitled to the same pay scales which are granted to their counter parts in the Himachal Pradesh University as well as Himachal Pradesh Krishi Vishvavidaylaya, Palampur. The workmen were granted pay scales of Rs.1200-2100 with effect from 1.1.1986 though their counter parts in Himachal Pradesh University as well as Himachal Pradesh Krishi Vishvavidaylaya, Palampur were granted pay scales of Rs.1500-2700. As per the notification dated 10.3.1992 (mark 'X' and mark 'Y') the Himachal Pradesh University had granted revised pay scales of Rs.570-1080 from Rs.160-400 with effect from 1.1.1978 and to Rs.1500-2600 with effect from 1.1.1986. The Labour Court on the basis of mark "X' and mark 'Y' had come to the right conclusion that the workmen are entitled to the pay scales of Rs.1500-2700 with effect from 1.1.1986 instead of Rs.1200-2100.

RW-1 Sh.Kuldeep Chand has also admitted in his cross-examination that the petitioner University is granting the same pay scales to its employees as are given by the Himachal Pradesh University, Shimla and Himachal Pradesh Krishi Vishvavidaylaya, Palampur to its employees.

Mr.B.S.Atri had laid reliance upon Full Bench decision of this court rendered in **Dr. M.P.Dwivedi and others vs. Dr.Y.S.Parmar University and another,** 1998 (2) Shim.L.C. 196 to substantiate his submissions with regard to ouster of the jurisdiction of the Labour Court. The Full Bench of this Court was only dealing whether the petitioner University was any other authority as per Section 15 of the Administrative Act, 1985. The Full Bench was not seized in any manner whether the petitioner University is an industry or not under the Industrial Disputes Act, 1947.

PW-1 had specifically stated in his statement that they are discharging their duties which are practical in nature i.e. maintaining the record of the books in the library. He has denied that they were doing clerical work. What is to be seen by the Labour Court while determining the status of workmen is the nature of the duties being discharged by them. The incumbent should not be discharging administrative or managerial duties. Professional Assistants are neither discharging managerial nor administrative duties. Moreover the Management has not placed any contemporarneous record to substantiate that the workmen were discharging managerial or administrative duties. It is clear from the statement of PW-1 that the respondents are workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 taking into consideration their nature of duties. The employees of the University can take recourse for redressal of their grievances if they are workmen before the Labour Court under the provisions of the Industrial Disputes Act, 1947 and if they are not workmen then before the H.P. State Administrative Tribunal established under the provisions of Administrative Tribunals Act, 1985. The Labour Court has come to the right conclusion that it had the jurisdiction to adjudicate upon the reference made to it by the State Government.

In **Jai Bhagwan v. Management of the Ambala Central Co-operative Ltd. and another,** AIR 1984 SCC 286 Their Lordships of the Hon'ble Supreme Court have held that existence of other remedy does not bar the workman from raising industrial dispute. Their Lordships have held as under:

> "Shri Rohtagi, learned counsel for the Respondent Bank, was unable to contend that there was even a remote compliance with the principles of natural justice. He was also unable to urge that the Industrial Tribunal had truly applied his mind to the case. He however, argued that the appellant had a remedy against the

> order of termination of services by way of an appeal to the Board of Management and that his failure to pursue that remedy barred him from raising any Industrial dispute. He also attempted to connect the order of termination of services with the absence of the workman from the bank on August 13 and 14, 1974, on days when his signature was found in the attendance register. We see no substance in either of the submissions. Raising an industrial dispute is a well recognized and legitimate mode of redress available to a workman, which has achieved statutory recognition under the Industrial Disputes Act and we fail to see why the statute-recognised mode of redress should be denied to a workman because of the existence or availability of another remedy. Nor are we able to understand how an Industrial Tribunal to whom a dispute has been referred for adjudication can refuse to adjudicate upon it and surrender jurisdiction which it undoubtedly has to some other authority. While the Government may exercise their discretion in deciding whether to refer or not to refer a dispute for adjudication, the Tribunal to whom the dispute has been referred has no discretion to decide whether to adjudicate or not. Once a reference has been properly made to an Industrial Tribunal, the dispute has to be duly resolved by the Industrial Tribunal. Resolution of the dispute cannot be avoided by the Tribunal on the ground that the workman had failed to pursue some other remedy. The attempt of Shri Rohatgi to connect the order terminating the appellant's services with his absence from the bank on August 13 and 4, 1974 is an attempt made before us for the first time. At no earlier stage was the order of termination of services sought to be sustained on the basis of the absence of the workman from the bank on August 13 and 14, 1974. It cannot be done now."

The contention of Mr.Atri that the petitioner University is not an industry within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 has been elaborately dealt with by the Labour Court in its award. The Labour Court while relying upon the judgment of Hon'ble Supreme Court reported as 1978 (2) SCC 213 has rightly come to the conclusion

that the petitioner University is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947.

Their Lordships of the Hon'ble Supreme Court have held in **Sadhu Ram v. Delhi Transport Corporation, AIR 1984 SC 1467** that the High Court is not entitled to interfere with findings on jurisdictional facts. Their Lordships have held as under:-

> "We are afraid the High Court misdirected itself. The jurisdiction under Art. 226 of the Constitution is truly wide but, for that very reason it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those Tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the Tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management. There was a conciliation proceeding, the conciliation had failed and the Conciliation Officer had so reported to the Government. The Government was justified in thinking that there was an industrial dispute and referring it to the Labour Court."

In view of the aforesaid discussion there is no merit in the writ petition and the same is dismissed and the award dated 2.9.2005 passed by the Labour Court, Shimla is upheld.

No order as to costs.

December 29 2007 (g) **(Rajiv Sharma), J.**